

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0406-01  
Bill No.: HB 106  
Subject: Courts; Criminal Procedure; Crimes and Punishment  
Type: Original  
Date: January 28, 2015

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Bill Summary: This proposal allows misdemeanor offenses for stealing to be expunged.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
General Revenue	Up to \$1,400,000	Up to \$1,400,000	Up to \$1,400,000
<b>Total Estimated Net Effect on General Revenue</b>	<b>Up to \$1,400,000</b>	<b>Up to \$1,400,000</b>	<b>Up to \$1,400,000</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Criminal Records	(\$540,152)	(\$654,780)	(\$661,449)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(\$540,152)</b>	<b>(\$654,780)</b>	<b>(\$661,449)</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 9 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Federal Funds	\$0 or (\$31,100,000)	\$0 or (\$62,200,000)	\$0 or (\$62,200,000)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0 or (\$31,100,000)</b>	<b>\$0 or (\$62,200,000)</b>	<b>\$0 or (\$62,200,000)</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Criminal Records	12 FTE	12 FTE	12 FTE
<b>Total Estimated Net Effect on FTE*</b>	<b>12 FTE</b>	<b>12 FTE</b>	<b>12 FTE</b>

\*Anticipated to drop to 2 to 3 FTE after initial period.

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials at the **Missouri Department of Transportation (MoDOT)** assume HB 106 will cause a loss of federal funds from this proposal. HB 106 adds any class A misdemeanor offense of §570.030, RSMo (Stealing Penalties) to the list of offenses eligible to be expunged. §570.030, RSMo is referenced in other statutes including §§142.905 (Revocation of license -- engaging in business without license, penalty - reports --liability for uncollected taxes --false or fraudulent returns -- deposit of civil penalties) and 302.286 (Theft of motor fuel punishable by suspension of driver's license -- reinstatement fee required), RSMo.

The Motor Carrier (MC) division of MoDOT administers and enforces federal and state MC law. 49 CFR parts 383 (Commercial Drivers License (CDL) Standards; Requirements and Penalties) and 384 (State Compliance With CDL Program) cover CDLs. 49 CFR 384.225 requires states to post and maintain as part of the CDLIS driver record all convictions, disqualifications and other licensing actions for violations of any state or local law relating to motor vehicle traffic control (other than parking violation) committed in any type of vehicle. 49 CFR 384.226 (Prohibition on masking convictions) specifically prohibits States from masking, deferring the imposition of judgment or allowing an individual to enter into a diversion program that would prevent convictions from appearing on the CDLIS driver record. Assuming expunging the offense would remove the stealing offense from the CDLIS driver record it could be argued that the state is in violation of the CFRs.

The consequences of State Noncompliance include the withholding of federal funds as indicated within 49 CFR part 384 subpart D, 49 CFR 384.401 , 49 CFR 384.403. The penalty for the first year is a withholding of 5% which is \$31.1 million dollars and then a penalty of 10% which is \$62.2 million each year thereafter.

**Oversight** assumes that since MoDOT is interpreting the federal regulation as a withholding of federal funds should this proposal pass, Oversight is unable to determine whether this will put MoDOT in noncompliance with the United States Department of Transportation Federal Highway Administration (FHWA). MoDOT has requested guidance from the FHWA, but has not received a response regarding this proposal.

ASSUMPTION (continued)

Officials at the **Department of Public Safety's Missouri Highway Patrol (DPS/MHP)** assume in the Criminal Justice Information Services Division there are currently 57,530 convictions that are ten years or older and could potentially qualify for expungement under this new legislation. If every person who is qualified to have his or her record expunged would submit a petition the first year, there would be approximately 57,530 petitions for expungement and would require 46 FTE's. There are an average of 9,800 arrests made each year for misdemeanor violations of section 570.030 which provides the potential number for petitions each year after the initial eligible petitions were processed.

1 FTE = 1,856 hours (average work hours per year) x 60 minutes per hour = 111,360 minutes per year. The current average time per petition to log, process, research, review, create related correspondences, and to expunge the information when the order is received is 90 minutes. Therefore, one FTE can handle 1,237 expungements per year =  $111,360 / 90$ .

With the current estimated potential of 57,530 petitions eligible for expungement upon enactment of this legislation, the following percentages of persons actually requesting an expungement will directly relate to the number of FTE's actually required:

10% =  $57,530 \times .10 = 5,753 / 1,237 = 4.65$  FTE's  
20% =  $57,530 \times .20 = 11,506 / 1,237 = 9.30$  FTE's  
30% =  $57,530 \times .30 = 17,259 / 1,237 = 13.95$  FTE's  
40% =  $57,530 \times .40 = 23,012 / 1,237 = 18.60$  FTE's  
50% =  $57,530 \times .50 = 28,765 / 1,237 = 23.25$  FTE's  
60% =  $57,530 \times .60 = 34,518 / 1,237 = 27.90$  FTE's  
70% =  $57,530 \times .70 = 40,271 / 1,237 = 33.56$  FTE's  
80% =  $57,530 \times .80 = 46,024 / 1,237 = 37.21$  FTE's  
90% =  $57,530 \times .90 = 51,777 / 1,237 = 41.86$  FTE's  
100% =  $57,530 / 1,237 = 46.51$  FTE's

While it is unrealistic to project that 100% of the persons eligible would file petitions for expungement, it would be a conservative estimate that 20 to 30 percent would file each year. With any significant change in expungement eligibility, there will be a larger amount of expungements filed in the first three years due to the large number of persons already eligible when the law becomes effective which could potentially increase the number of FTE's during this timeframe.

ASSUMPTION (continued)

These FTE's (CJIS Technicians) would be necessary to process all expungement requests, review criminal history records, contact any agency associated with the arrests or convictions, and collect the necessary data for the court orders.

Based on the average yearly salary and benefit rate per FTE at \$53,365 and the ability of that employee to process 1,237 expungements per year, the cost alone per expungement is  $= \$53,365 \div 1237 = \$43.14$ . It is suggested that a \$75.00 fee, similar to the criminal history background check fee, be implemented for the cost of researching and reviewing the criminal histories, as well as contacting of the various agencies associated with the arrests. Similar expungement requirements in other states charge a fee to offset the cost of the time required to process the expungements. Their fees ranged from \$50 to \$450 per petition per arrest date.

Based on our estimate that 20% to 30% of those eligible would file, nine to fourteen FTE's would be needed to process the added expungement requests for at least the first three years after enactment. For purposes of this fiscal note, the Patrol will request 12 which is the middle of that range. It is anticipated, based on arrests by this statute, the number of necessary FTE's would drop to 2-3 after this initial period. These FTE (CJIS Technicians) would be necessary to process all expungement requests, review criminal history records, contact any agency associated with the arrests or convictions, and collect the necessary data for the court orders. These FTE will most likely be 2nd and 3rd shift employees so they would not require any equipment. However, there would be recurring costs of \$650 per year per FTE for office supplies and phone charges. If any FTE were placed on the 1st shift, standard equipment would be required at a one-time cost of \$3,566 per FTE.

**Oversight** assumes that the 20% to 30% estimate from DPS/MHP would be 14,000 petitions for expungement each year. §488.650 allows a surcharge in the amount of \$100 on all petitions for expungement filed under the provisions of §610.140. The moneys collected from this surcharge shall be payable to the General Revenue Fund. Therefore, for this fiscal note, Oversight will assume the fiscal impact to be up to \$1,400,000 (14,000 \* \$100) in revenue each year. There will be overhead costs showing in the Criminal Records Fund from this proposal. Any decision to move funds from General Revenue to the Criminal Records Fund will be made as a budget decision to cover the costs.

Officials at the **Office of the Attorney General** assume that any potential costs arising from this proposal can be absorbed with existing resources.

ASSUMPTION (continued)

Officials at the **Department of Corrections (DOC)** assume no fiscal impact from this proposal. Penalty provisions for violations, the component of the bill to have potential fiscal impact for DOC, is for a class A misdemeanor. The DOC would not supervise these class A misdemeanor cases.

Officials at the **Office of the State Public Defender**, the **Office of Prosecution Services**, the **Office of the State Courts Administrator** and the **Department of Revenue** each assume no fiscal impact to their respective agencies from this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
<b>GENERAL REVENUE FUND</b>			
<u>Revenue</u> - Office of State Court Administrators - surcharge on expungement from §488.650	Up to <u>\$1,400,000</u>	Up to <u>\$1,400,000</u>	Up to <u>\$1,400,000</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b>Up to <u>\$1,400,000</u></b>	<b>Up to <u>\$1,400,000</u></b>	<b>Up to <u>\$1,400,000</u></b>
<b>CRIMINAL RECORDS FUND</b>			
<u>Costs</u> - DPS/MHP			
Personal Service	(\$285,360)	(\$345,856)	(\$349,315)
Fringe Benefits	(\$248,292)	(\$300,929)	(\$303,939)
Equipment and Expense	<u>(\$6,500)</u>	<u>(\$7,995)</u>	<u>(\$8,195)</u>
<u>Total Costs</u> - DPS/MHP	<u>(\$540,152)</u>	<u>(\$654,780)</u>	<u>(\$661,449)</u>
FTE Change - DPS/MHP	12 FTE	12 FTE	12 FTE
<b>ESTIMATED NET EFFECT ON CRIMINAL RECORDS FUND</b>	<b><u>(\$540,152)</u></b>	<b><u>(\$654,780)</u></b>	<b><u>(\$661,449)</u></b>
Estimated Net FTE Change for Criminal Records Fund*	12 FTE	12 FTE	12 FTE
*Anticipated to drop to 2 to 3 FTE after initial period			
<b>FEDERAL FUND</b>			
<u>Loss</u> - MoDOT - Potential State Noncompliance resulting in loss of federal funding	\$0 or <u>(\$31,100,000)</u>	\$0 or <u>(\$62,200,000)</u>	\$0 or <u>(\$62,200,000)</u>
<b>ESTIMATED NET EFFECT ON FEDERAL FUND</b>	<b>\$0 or <u>(\$31,100,000)</u></b>	<b>\$0 or <u>(\$62,200,000)</u></b>	<b>\$0 or <u>(\$62,200,000)</u></b>

FISCAL IMPACT - Local Government

FY 2016  
(10 Mo.)

FY 2017

FY 2018

\$0

\$0

\$0

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill adds any class A misdemeanor offense of stealing to the list of offenses that are eligible to be expunged when the offenses occurred in this state and were prosecuted under the jurisdiction of a Missouri municipal, associate, or circuit court.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Attorney General  
Department of Corrections  
Office of the State Public Defender  
Office of Prosecution Services  
Office of the State Courts Administrator  
Department of Revenue  
Department of Public Safety  
Missouri Highway Patrol  
Missouri Department of Transportation

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